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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FRANCIS G. KEOUGH, )  
 )  
 Defendant. )

**GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION FOR GOVERNMENT LIST OF WITNESSES**

The United States of America, by and through Michael J. Sullivan, United States Attorney for the District of Massachusetts, and William M. Welch II, Assistant United States Attorney, hereby files this response to defendant Keough's Motion for Government List of Witnesses as follows:

The Government opposes this motion in part. The Government objects to the defendant's request for the names and addresses of witnesses prior to seven days before trial, as dictated by Local Rule 117(A)(8)(a). The Government intends to follow the schedule established by the Local Rules.

"In this Circuit, the law is settled: '[T]here is no constitutional or statutory requirement that the identity of prosecution witnesses be disclosed before trial.'" United States v. Collazo-Aponte, 216 F.3d 163, 182 (1st Cir. 2000) (quoting

United States v. Bello-Perez, 977 F.2d 664, 670 (1st Cir. 1992)). See also United States v. Reis, 788 F.2d 54, 58 (1st Cir. 1986). Congress, in fact, has rejected attempts to amend the rule so as to compel disclosure of witnesses, stating in its conference report that such disclosure "is not in the interest of the effective administration of criminal justice . . ." H.R. Conf. Rep. No. 414, 94th Cong., 1st Sess. 12 (1975). See also 121 Cong. Rec. H. 7682-7683, (July 28, 1975).

The defendant claims that fairness and due process compel this court to order the early release of witness names and addresses. However, as a legal matter, "the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded. . . ." Weatherford v. Bursey, 429 U.S. 545, 559-60 (1977) (quoting Wardius v. Oregon, 412 U.S. 470, 474 (1973)). Moreover, a panel of judges, prosecutors and defense attorneys established the Local Rules with fairness and due process for all parties in mind, and agreed that the release of witness names and addresses seven days before trial was the fairest approach. The defendant has presented absolutely no exceptional set of circumstances that distinguishes this case from any other case on the federal docket.

Moreover, the defendant's fairness argument is overstated at best. The defendant has employed a private investigator since late 2004. That private investigator already has met with and

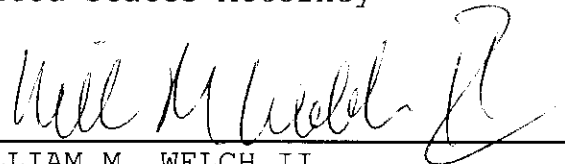
interviewed Frank Ware. In addition, the defendant arranged for the private investigator to interview several other potential prosecution witnesses at his office at 769 Worthington Street when the defendant was still Executive Director of the Friends of the Homeless, Inc. Therefore, to suggest that the defendant labors under the "`pretrial ignorance of the identity of the prosecution's witnesses'" is folly. See Motion for Government List of Witnesses, p. 2.

Therefore, based upon the foregoing, the Government respectfully requests that the court deny defendant's Motion for Government List of Witnesses.

Filed this 28th day of June, 2005.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

  
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WILLIAM M. WELCH II  
Assistant United States Attorney

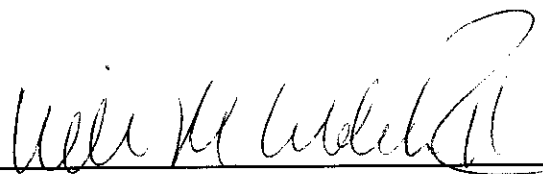
CERTIFICATE OF SERVICE

Hampden, ss.

Springfield, Massachusetts  
June 28, 2005

I, William M. Welch, Assistant U.S. Attorney, do hereby certify that I have served a copy of the foregoing by mailing said motion to:

Jack St. Clair, Esq.  
73 Chestnut Street  
Springfield, MA 01105

  
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WILLIAM M. WELCH II  
Assistant United States Attorney